UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NINA GREEN-YOUNGER, Plaintiff,	:	
v.	:	Civil No. 3:99CV1425(CFD)
JO ANNE B. BARNHART, COMMISSIONER OF SOCIAL SECURITY, Defendant.	:	

RULING ON MOTIONS FOR ATTORNEY'S FEES

Pending are the plaintiff's Motion for Attorney's Fees Pursuant to Equal Access to Justice Act **[Doc. # 39]** and Supplemental Motion for Attorney's Fees Pursuant to Equal Access to Justice Act **[Doc. # 47]**. Because the Court finds that the position of the Government was not substantially justified, the motions are **GRANTED.**

I. Background:

In August 1995, the plaintiff, Nina Green-Younger, filed an application for Disability Insurance Benefits ("DIB") with the Social Security Administration ("SSA"). In October 1995 her application was denied, as was her subsequent request for reconsideration. On August 5, 1997, a hearing was held before an Administrative Law Judge ("ALJ"). On September 10, 1997, the ALJ denied Green-Younger's application. On June 18, 1999, the SSA Appeals Council denied Green-Younger's request for review. Pursuant to 42 U.S.C. § 405(g), Green-Younger appealed from the ALJ's decision to the United States District Court for the District of Connecticut.

On March 20, 2002, this Court accepted the recommended ruling of Magistrate Judge William I. Garfinkel in its entirety, which denied Green-Younger's motion for summary

judgment and motion to remand for a new hearing, and granted the Government's motion to affirm the ALJ's decision. [Doc.#29] Green-Younger appealed to the United States Court of Appeals for the Second Circuit. On July 10, 2003, the Second Circuit reversed this Court's order accepting Judge Garfinkel's recommended ruling, and remanded Green-Younger's case back to this Court with instructions to remand the matter to the Commissioner of the SSA for calculation of disability benefits. See Green-Younger v. Barnhart, 335 F.3d 99 (2d Cir. 2003). Subsequently, Green-Younger filed a motion in this Court claiming status as a prevailing party under the Equal Access to Justice Act ("EAJA"), and seeking attorney's fees.

II. The Equal Access to Justice Act:

The EAJA provides, in relevant part, that:

> Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A) (2002). The term "fees and other expenses" includes "reasonable attorney fees." Id. § 2412(d)(1)(D)(2)(A). With respect to administrative actions, the term "position of the United States" refers both to the Government's litigation position and to the underlying agency action that made the lawsuit necessary. Id. § 2412(d)(1)(D)(2)(D).

When seeking attorney's fees under the EAJA, a prevailing party first must allege that the Government's position was not substantially justified. See 28 U.S.C. § 2412(d)(1)(B); see also Scarborough v. Principi, __ U.S. __, __, 124 S.Ct. 1856, 1862 (2004). Then the burden shifts to

the Government to show that its position was substantially justified. Scarborough,__ U.S. at __, 124 S.Ct. at 1865-67; Commodity Futures Trading Comm'n v. Dunn, 169 F.3d 785, 786 (2d Cir. 1999). That is, the Government must demonstrate that its position had a reasonable basis in law and fact. Pierce v. Underwood, 487 U.S. 552, 556 & n.2 (1988); Kerin v. U.S. Postal Service, 218 F.3d 185, 189 (2d Cir. 2000); Sotelo-Aquije v. Slattery, 62 F.3d 54, 57 (2d Cir. 1995). "The test is essentially one of reasonableness." Federal Election Commission v. Political Contributions Data, Inc., 995 F.2d 383, 386 (2d Cir. 1993); see also, Curry v. Apfel, 209 F.3d 117, 122 (2d. Cir. 2000) (substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion").

In an appeal from the merits of an ALJ's decision denying an application for DIB, the reviewing court applies the "substantial evidence" standard of review.[1] Green-Younger, 335 F.3d at 105-06. Prevailing under this standard, however, does not necessarily lead to success in a subsequent motion for attorney's fees under the EAJA, as there is no congruence between the "substantial evidence" standard and the "substantially justified" standard. Sotelo-Aquije v. Slattery, 62 F.3d at 58; see also, United States v. Paisley, 957 F.2d 1161, 1167 (4th Cir.), cert. denied, 506 U.S. 822, 113 S.Ct. 73, 121 L.Ed.2d 38 (1992); Welter v. Sullivan, 941 F.2d 674,

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[1]In regard to the "substantial evidence" standard of review, the Second Circuit has explained:

> "When deciding an appeal from a denial of disability benefits, we focus on the administrative ruling rather than the district court's opinion. . . We conduct a plenary review of the administrative record to determine whether the Commissioner's conclusions are supported by substantial evidence in the record as a whole or are based on an erroneous legal standard . . . Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Green-Younger, 335 F.3d at 105-06 (internal citations and quotation marks omitted).

676 (8th Cir. 1991); Broussard v. Bowen, 828 F.2d 310, 311-12 (5th Cir. 1987).

III. Analysis:

A) Substantial Justification

The Government does not challenge Green-Younger's claim that she was a prevailing party for purposes of the EAJA. Green-Younger thus raises the question of whether the Government's position in her case, which was rejected by the Second Circuit, was nonetheless "substantially justified."[2]

In support of her application for DIB, Green-Younger principally relied on the testimony of Dr. Jeffrey Helfand, her treating physician for a period of eight years. Based on his experience treating Green-Younger, Dr. Helfand testified that Green-Younger had "severe fibromyalgia"[3] and other illnesses associated with her back pain. As to the impact those illnesses had on her ability to function, Dr. Helfand opined before the ALJ that Green-Younger's "ability to function at a normal level because of the persistent, severe pain is markedly limited, noting specifically

[2]The EAJA provides that attorney's fees shall be awarded to the prevailing party unless the Court "finds that the position of the United States was substantially justified or *that special circumstances make an award unjust*." 28 U.S.C. § 2412(d)(1)(A) (2002). In its memorandum in opposition to Green-Younger's motion, the Government has not argued that any "special circumstances" exist that would make an award of fees improper in the instant case, choosing to only argue that its position was substantially justified. Therefore, the Court will limit its analysis to that portion of § 2412(d)(1)(A).

[3]Fibromyalgia is "a common, but elusive and mysterious, disease, much like chronic fatigue syndrome, with which it shares a number of features. . . . Its cause or causes are unknown, there is no cure, and, of greatest importance to disability law, its symptoms are entirely subjective. There are no laboratory tests for the presence or severity of fibromyalgia. The principal symptoms are 'pain all over,' fatigue, disturbed sleep, stiffness, and--the only symptom that discriminates between it and other diseases of a rheumatic character--multiple tender spots, more precisely 18 fixed locations on the body (and the rule of thumb is that the patient must have at least 11 of them to be diagnosed as having fibromyalgia) that when pressed firmly cause the patient to flinch." Sarchet v. Chater, 78 F.3d 306, 308 (6th Cir. 1996).

that she could not sit or stand for more than four hours a day, that she could not continuously sit or stand for 60 minutes without a rest period, and that it was difficult for her to sit for more than 30 minutes at a time." Green-Younger, 335 F.3d at 106-07. The ALJ accepted the opinion of Dr. Helfand that Green-Younger had fibromyalgia and degenerative disc disease, yet rejected Dr. Helfand's opinion as to the severity of that condition and the impact it had on Green-Younger. More specifically, the ALJ concluded that her medical condition did not equal or exceed a listed impairment, and that she had the residual functional capacity to do sedentary work involving six hours a day of sitting and two hours of standing or walking.[4] Id., 106. In so concluding, the ALJ relied on a work fitness evaluation conducted by Jill Tomasello, a physical therapist, on Green-Younger over the course of two days in 1995. In the evaluation, Tomasello concluded that, although more testing was needed, Green-Younger "has demonstrated the ability to work at a sedentary work level." In addition, the ALJ relied on reports from two SSA consulting physicians who conducted independent residual functional capacity assessments based on the

[4]The Social Security regulations prescribe a sequential five-step test for determining whether a claimant is disabled. See 20 C.F.R. §§ 404.1520, 416.920 (1999). Under this test, the ALJ must determine: (1) whether the claimant is presently unemployed; (2) if so, whether the claimant has a severe impairment or combination of impairments; (3) whether any of the claimant's impairments are listed in the regulations as being so severe as to preclude substantial gainful activity; (4) if not, whether the claimant possesses the residual functional capacity to perform his or her past relevant work; and (5) if not, whether the claimant is able to perform any other work in the national economy. See 20 C.F.R. §§ 404.1520, 416.920; Bowen v. Yuckett, 484 U.S. 137, 141 (1987). If the applicant's impairment meets or equals one of the impairments in the listings, the claimant is automatically considered disabled. 20 C.F.R. § 404.1520(d). If it does not, the applicant may still receive DIB if she can show that she lacks the residual functional capacity to perform her former work, and that she is prevented from doing any other work. 20 C.F.R. § 404.1520(e) and (f).

information and test results in Green-Younger's file.[5] See 20 C.F.R.§ 404.1520(e) ("We use our residual functional capacity assessment . . . to determine if you can do your past relevant work"). Both physicians concluded that Green-Younger could sit for at least six hours a day and could work an eight hour day through a combination of sitting and standing. In addition, the second physician, after reviewing Green-Younger's prior test results, disagreed with Dr. Helfand's conclusion that Green-Younger was limited to sitting or standing for four hours or less because "[e]vidence does not show deficits of motor function or significant arthritis to severely limit standing or sitting." Id., 104, 107-08. Based on this other evidence, the ALJ declined to give Dr. Helfand's opinion controlling weight, and denied Green-Younger's application for DIB.

On appeal, the Second Circuit concluded that the ALJ improperly failed to give the testimony of Dr. Helfand controlling weight, and improperly determined that Dr. Helfand's opinion was inconsistent with other substantial evidence, namely, the reports from Tomasello and the two consulting SSA doctors. See, 20 C.F.R. § 404.1527(d)(2) ("a treating source's opinion on the issue(s) of the nature and severity of your impairment(s)" will be given "controlling weight" if the opinion is "well supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record"). The Second Circuit stated that "[i]t also appears to us that the ALJ, like the SSA consulting physicians, did not actually credit Dr. Helfand's diagnosis of fibromyalgia or misunderstood its nature. The ALJ effectively required 'objective' evidence for a disease that

[5]Neither SSA consulting physician actually examined Green-Younger. Instead, the first physician relied on Tomasello's report, while the second relied on the test results in Green-Younger's file. See Green-Younger, 335 F.3d at 108.

eludes such measurement." Green-Younger, 335 F.3d at 108. Therefore, the Second Circuit further concluded that "the ALJ's decision that Green-Younger is not legally disabled is based on an erroneous legal standard and is not supported by substantial evidence." Id., 109.

Although the Second Circuit concluded that the ALJ's interpretation of the law, and concomitant review of the facts, was erroneous, this does not necessarily lead to the conclusion that it was without substantial justification. See, Scarborough, --- U.S. at -----, 124 S.Ct. at 1866 ("Congress did not . . . want the substantially justified standard to be read to raise a presumption that the Government position was not substantially justified simply because it lost the case."). Upon review of the record and the opinion from the Second Circuit, however, this Court concludes that the Government's position was not substantially justified.

The Second Circuit first concluded that the ALJ's findings were based on an erroneous legal standard. See Green-Younger, 335 F.3d at 109. More specifically, the Second Circuit concluded that the ALJ improperly required objective evidence for Green-Younger's medical condition, noting that "a growing number of courts, including our own . . . have recognized that fibromyalgia is a disabling impairment and that there are no objective tests which can conclusively confirm the disease." Id., at 108 (internal quotation marks omitted). As the Second Circuit noted, the ALJ's focus on the need for "objective evidence" was contrary to both the physical characteristics of that disease, and to cases from several Circuit Courts of Appeal, including the Second Circuit, recognizing that fibromyalgia eludes objective measurements. See, e.g., Lisa v. Sec. of the Dep't of Health and Human Services, 940 F.2d 40, 43 (2d Cir. 1991) (directing SSA to consider new diagnostic reports and articles on plaintiff's alleged fibromyalgia, due, in part, to difficulty of objectively verifying that disease); see also Kelley v. Callahan, 133

F.3d 583, 589 (8th Cir. 1998) ("Fibromyalgia is muscle pain in fibrous tissues . . . which results in symptoms such as achiness, stiffness, and chronic joint pain."); Sarchet v. Chater, 78 F.3d 306, 308 (6th Cir. 1996) (the "cause or causes [of fibromyalgia] are unknown, there is no cure, and, of greatest importance to disability law, its symptoms are entirely subjective. There are no laboratory tests for the presence or severity of fibromyalgia."); Preston v. Sec. of Health and Human Services, 854 F.2d 815, 818 (6th Cir. 1988) ("there are no objective tests which can conclusively confirm [fibromyalgia]").[6] Therefore, under the decisions cited by the Second Circuit, this Court finds that the ALJ's repeated requests for objective evidence of Green-Younger's fibromyalgia, and its resulting finding that Dr. Helfand's opinion was not based on "medically acceptable" diagnostic techniques, was not substantially justified. See, e.g., Fraction v. Bowen, 859 F.2d 574, 575 (8th Cir. 1988) (claimant entitled to attorney's fees after successful appeal of denial of DIB due to, inter alia, fact that the government acted "contrary to clearly established circuit precedent); Williams v. Sullivan, 775 F.Supp. 615, 618 (S.D.N.Y. 1991) (government's position was not substantially justified given established Second Circuit law).

The Second Circuit also concluded that the ALJ found that Dr. Helfand's opinion was not entitled to controlling weight because it was inconsistent with other substantial record evidence, namely the report from the physical therapist and the two SSA consulting doctors. As the Government correctly contends, the regulations allow for the ALJ to consider those types of

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[6]Indeed, the only symptom of fibromyalgia that can be measured somewhat objectively is "multiple tender spots, more precisely 18 fixed locations on the body (and the rule of thumb is that the patient must have at least 11 of them to be diagnosed as having fibromyalgia) that when pressed firmly cause the patient to flinch." Sarchet, 78 F.3d at 308. As the Second Circuit noted, the ALJ did not mention Dr. Helfand's documentation that Green-Younger had "multiple tender points in the distribution characteristic of fibromyalgia." Green-Younger, 335 F.3d at 107.

sources. See 20 C.F.R. §§ 404.1513(d) (listing other resources that may be used "to show the severity of your impairment(s) and how it affects your ability to work"); 404.1520(d) ("If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 404.1545."); 404.1545(a)(3) ("We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations."). Indeed, the regulations specifically provide that a treating physician's opinion on the nature and severity of the applicant's medical condition is entitled to controlling weight only if it "is well supported by medically acceptable clinical and laboratory diagnostic techniques and *is not inconsistent with the other substantial evidence* in your record . . . ." 20 C.F.R. § 404.1527 (emphasis added). Although the ALJ was entitled to consider these sources, the ALJ's finding that they were "substantial" evidence that was inconsistent with Dr. Helfand's opinion was not reasonable. First, under clear case law, the reports from the two SSA physicians were entitled only to "limited" weight in the ALJ's analysis. See, e.g., Cruz v. Sullivan, 912 F.3d 8, 13 (2d Cir. 1990) ("in evaluating a claimant's disability, a consulting physician's opinions or reports should be given limited weight"). The fact that the two consulting SSA physicians did not physically examine Green-Younger, but rather relied entirely on prior tests and reports, only serves to buttress this conclusion. See, e.g., Kelley, 133 F.3d at 589 ("The opinion of a consulting physician who examines a claimant once or not at all does not generally constitute substantial evidence."). Moreover, as the Second Circuit noted, the physical therapist's report did not constitute "substantial evidence" because it was completed after only one examination of Green-Younger, and because it "was based on inconsistent results

and required verification, and . . . a subsequent examination produced contrary results . . . ." Green-Younger, 335 F.3d at 107. Accordingly, the Court finds that the ALJ's finding that Dr. Helfand's opinion was contradicted by other "substantial evidence" was not substantially justified. See Taylor v. Heckler, 835 F.2d 1037, 1043 (3rd Cir. 1987) (Government's position not substantially justified when "[t]hree physicians submitted to the ALJ unopposed medical evidence that confirmed the existence and severity of [plaintiff]'s medical condition. [Plaintiff] also offered her own testimony regarding her chronic back pain. In sum, the record evidence concerning [plaintiff]'s disability was strong and detailed."); Kemp v. Bowen, 822 F.2d 966, 967 (10th Cir. 1987) (Government's position not substantially justified when ALJ rejected evidence from plaintiff's treating physician's and accepted a "scrap" of medical evidence from Dr. Mark Johnson, a consultant, who remarked that appellant's symptoms were "mild" after his one, initial examination); Pagano v. Heckler, 622 F.Supp. 1069, 1071 (D.C.Pa. 1985) (Government's position not substantially justified because ALJ failed to give proper weight to the opinion of the treating physician, discounted the plaintiff's subjective complaints, and relied on his own lay observations).

Finally, the Second Circuit noted that the ALJ improperly failed to credit Green-Younger's subjective testimony concerning the impact her medical condition had on her ability to work. The ALJ found that "Green-Younger's 'allegations of pain and functional limitations are found not to be entirely credible, particularly in light of the minimal objective findings.'" Green-Younger, 335 F.3d at 108. This statement fails once again to take into account prior case law establishing that fibromyalgia eludes objective evidence. See, e.g., Lisa, 940 F.2d at 43. Moreover, the ALJ's findings concerning Green-Younger's subjective testimony on her medical

condition contravenes law from the Second Circuit, which states that: "Subjective pain may serve as the basis for establishing disability, even if . . . unaccompanied by positive clinical findings of other 'objective' medical evidence." Green-Younger, 335 F.3d at 108 (quoting Donato v. Sec. of Dep't of Health and Human Services, 721 F.2d 414, 418-19 (2d Cir. 1983).

Thus, the ALJ's failure to give the treating physician's opinion controlling weight, its disregard of substantial case law concerning the evidence applicable to fibromyalgia and its failure to properly credit Green-Younger's subjective testimony cannot be termed reasonable in either fact or law. Therefore, the Court finds that the Government has failed to meet its burden by demonstrating a substantial justification for its actions.

B) Reasonable Fees

As noted previously, the EAJA provides that "a court shall award to a prevailing party other than the United States *fees and other expenses* . . . incurred by that party in any civil action . . . ." 28 U.S.C. § 2412(d)(1)(A) (2002). The term "fees and other expenses" includes "reasonable attorney fees." Id. § 2412(d)(1)(D)(2)(A). Moreover, the EAJA provides that "attorney's fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee." Id. The Government claims that, if Green-Younger is entitled to attorney's fees under the EAJA, the amounts submitted by her attorney are unreasonable. Green-Younger contends that the amount of hours submitted is reasonable. In addition, Green-Younger seeks an increase from the statutory maximum rate based both on a cost-of-living adjustment and as a result of her attorney's special skills.

The Court first turns to Green-Younger's request for a departure based on a cost-of-living

adjustment. A district court has discretion whether to grant cost of living increase in statutory hourly rate cap for an attorney fee award under the EAJA, and an increase in the consumer price index does not mandate an increase. See, e.g., Stockton v. Shalala, 36 F.3d 49, 50 (8th Cir. 1994); Begley v. Sec. of Health and Human Services, 966 F.2d 196, 199 (6th Cir. 1992); May v. Sullivan, 936 F.2d 176 (4th Cir. 1991). In support of her motion for fees, Green-Younger has attached an affidavit from her attorney, Charles Pirro ("Pirro"), in which he states that he reviewed the Department of Labor's Consumer Price Index and found that the Index increased "19%-34% from March 1996 to August 2003." Further, Pirro claims that the application of that increase to the statutory rate of $125 yields an adjusted hourly rate of $149.18, which he then applies to the total hours he worked between 1999 and 2004. Rather than adjust the hourly rate for each year in question, Pirro simply adjusted the rate once. This was improper, as Pirro should have calculated the rate individually for each applicable year. See Kerin v. U.S. Postal Service, 218 F.3d 185, 194 (2d Cir. 2000) ("because work on this case 'began in 1989 and continued for approximately [nine] years,' . . . the hourly rate under § 2412(d)(1)(A) should only be increased by the corresponding Consumer Price Index for each year in which the legal work was performed."); see also, Masonry Masters, Inc. v. Nelson, 105 F.3d 708, 711- 13 (D.C.Cir.1997) (holding that cost of living adjustment should be made using a different hourly cap for each year in question); Marcus v. Shalala, 17 F.3d 1033, 1039-40 (7th Cir.1994) (same); Perales v. Casillas, 950 F.2d 1066, 1076 (5th Cir.1992) (same); Chiu v. United States, 948 F.2d 711, 720-21 (Fed.Cir.1991) (same). Pirro has not broken out such an adjustment on an annual basis. Accordingly, the Court finds that Green-Younger is not entitled to the requested cost-of-living increase above the statutory maximum rate.

In his affidavit, Pirro also claims that he has represented over 1,000 claimants before the SSA and over 200 claimants in judicial reviews before the District Court, and that he has "specialized in Social Security disability claims for over twenty years." Although not explicitly requested, Pirro seems to be seeking an increase from the $125 statutory maximum based on the presence of a "special factor." See § 2412(d)(1)(D)(2)(A). Attorney Pirro has not set forth what he considers to be a reasonable fee for an attorney with his "specialization," nor that Green-Younger could not have received comparable representation at a lower price. See, e.g., Cervantez v. Sullivan, 739 F.Supp. 517, 524 (E.D.Cal. 1990) ("an attorney seeking fees in excess of the statutory rate must demonstrate that counsel with those qualifications "can be obtained only at rates in excess of the $[125] cap."). Even if he had, however, this Court finds that this fairly straightforward SSA case did not require the special skills necessary to justify an increase as a "special factor." See Stockton, 36 F.3d at 50 (denying increase because the case "was a straightforward social security disability case that did not involve particularly difficult or complex issues"); Chynoweth v. Sullivan, 920 F.2d 648, 650 (10th Cir. 1990) (rejecting application of "special factor" adjustment because, "[a]lthough Social Security benefits law involves a complex statutory and regulatory framework, the field is not beyond the grasp of a competent practicing attorney with access to a law library and the other accouterments of modern legal practice."). Consequently, the Court concludes that Green-Younger is entitled to recover attorney's fees at the statutory maximum rate of $125 per hour.

The Court turns next to the Government's claim that the amount of hours submitted by Green-Younger is unreasonable. In a claim for attorney's fees under § 2412(d), the court should award fees for all time reasonably expended on the successful litigation as a whole, and not just

the time spent contesting the particular aspect of the government's case that was found to be without substantial justification. Russell v. National Mediation Bd., 775 F.2d 1284, 1291 (5th Cir. 1985). Therefore, "[a]bsent unreasonably dilatory conduct by the prevailing party in any portion of the litigation, which would justify denying fees for that portion, a fee award presumptively encompasses all aspects of the civil action." Commissioner v. Jean, 496 U.S. 154, 160-61 (1990). A court should be careful, however, to "exclude hours that are not 'reasonably expended,' i.e. hours that are excessive, redundant or otherwise unnecessary." Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).

The EAJA specifically requires that "[a] party seeking an award of fees and other expenses shall . . . submit to the court an application for fees and other expenses . . . including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed." 28 U.S.C. § 2412(d)(1)(B). In compliance with § 2412(d)(1)(B), Green-Younger submitted a itemized statement covering Pirro's involvement in this case from June 1999 to November 2003, as well as a supplemental statement covering the period December 2003 to January 2004, for a total claimed hour amount of 191.80. The Government takes issue with several areas of the itemized statements, yet its criticisms amount to nothing more than statements that a claimed amount "seems quite excessive" or that it is "extremely excessive." The Government fails to point to any case law that supports its subjective statements about how long Green-Younger's attorney should have spent on a particular task. Indeed, the Court finds that the Government's subjective assessments fail to reflect the actual time spent by Attorney Pirro on Green-Younger's case. For example, the Government states that "[p]laintiff's counsel claims

27.8 hours for the period 11-21-02 through 3-21-03, relating to housekeeping and preparation for and attendance at oral argument. Again, the time claimed seems quite excessive and [an] award of at most 12 hours or so would be more appropriate." The appeal from the merits of the ALJ's decision denying Green-Younger's application for DIB was argued before the Second Circuit on March 20, 2003. As the Green-Younger notes, that 27.8 hours Pirro spent leading up to that appeal included such activities as reviewing the entire record, conducting additional research and reading prior Second Circuit decisions and preparing, rehearsing and presenting the oral argument. Given the amount of tasks and effort required to present a successful argument to the Second Circuit, Pirro's 27.8 hours is reasonable. The Court finds that the time spent by Pirro during that period, as well as throughout the rest of this protracted litigation, was reasonable.

Consequently, the Court **GRANTS** Green-Younger's Motion for Attorney's Fees Pursuant to the EAJA **[Doc. # 39]** and Supplemental Motion for Attorney's Fees Pursuant to the EAJA **[Doc. # 47]**, and awards Green-Younger $23,975 in attorney's fees[7] and $509.07 in costs,[8] for a total award of $24,484.07.

SO ORDERED this 30th day of September 2004, at Hartford, Connecticut.

/s/ CFD

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

[7]The $23,975 in attorney's fees results from the Court accepting the full 191.80 hours of work at the statutory rate of $125.

[8]The Government has not challenged any of the costs submitted by Green-Younger.